

## **REMARKS**

Claims 33 – 35, 38, 40, 41, 43 - 45, 47, 49 -51, 53 -55, 57, 59 - 61 are pending. In accordance with the foregoing, claims 41, 51, 60 and 61 are amended. The remaining claims remain as previously submitted. No claims are added. All amendments are in response to the rejections under Section 112 and the objections to the claims. No new matter is added.

### **I. Claim objections**

Claim 55 is amended per the Examiner's recommendation. The Attorney for Applicants apologizes for his failure to do so previously.

### **II. Rejections under Section 112**

Claims 41, 51, 60 and 61 have been amended to clarify that the pacing interval extended is the same interval that is randomly modulated, as set forth in the specification. As specifically disclosed, the AV interval may be the pacing interval that is randomly modulated and it correspondingly is also the interval that is extended responsive to the morphological analysis. This amendment is believed to overcome the rejections under Section 112.

### **III. Rejections under Section 102**

All claims are rejected under 35 U.S.C. 102(e) as being anticipated by Bradley (U.S. 2003/0050671). This rejection is respectfully traversed.

The claims all require that the pacing interval is extended in response to the detection of the intrinsic signal component. In particular, in the preceding Office Action, the Examiner stated that the device in Bradley meets this requirement because it

"extends a pacing interval in response to the detecting of an autonomous intrinsic signal component." This exact language is also carried forward in the Final Office Action and apparently is relied upon in the present rejection over Bradley.

The Examiner notes that Bradley teaches modulation of the AV and VV pacing intervals as part of its rate response function. Undoubtedly this is so. However, this function is unrelated to morphological analysis it performs related to capture detection. The claims as previously pending and as presently amended required an extension of "a" or "the" pacing interval in response to the morphology of the sensed depolarization following a delivered pacing pulse indicating the presence of intrinsic activity. Regardless of whether this is interpreted as the same pacing interval (e.g. the AV interval) or different intervals (e.g. the AV and VV intervals), the extension of the intervals in Bradley is not done in response to the morphological analysis.

Applicant again respectfully asserts that the Examiner is reading the required causal connection out of the claims in conjunction with maintaining the 102 rejection over Bradley. The Attorney for Applicants has repeatedly been advised by the Patent Office that "responsive to" or "in response to" is sufficient to require a causal connection. The present rejection is thus respectfully asserted to be improper as it is clearly based upon an unreasonable interpretation of the claims as evidenced by the Patent Office's own prior statements.

Withdrawal of the rejections of all claims over Bradley is again respectfully requested.

#### **IV. Finality of subsequent office actions**

The amendments to claims 41, 51, 60 and 61 as discussed have no relevance to the validity of the rejection of the claims over Bradley. Bradley fails to anticipate the claims regardless of whether the pacing interval modulated (e.g. the AV interval) is the same as the pacing interval that is extended. As such, the above discussed

amendments cannot reasonably be argued to necessitate a new ground of rejection. Therefore it is respectfully requested that any new grounds for rejection will be properly presented in the form of a non-final office action.

**V. Conclusion**

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Further, Applicant reserves the right to re-present any originally filed, cancelled, and/or previously unclaimed subject matter in a subsequently filed continuing application without prejudice or disclaimer. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Date: August 26, 2010

/Reed A Duthler/  
Reed A. Duthler, Reg. No. 30,626  
Telephone: (763) 526-1564  
Customer No. 27581